CARRIERS—FAILURE TO PURCHASE TICKETS—EXCESS FARE.—FULMER V. SOUTHERN RY. CO., 45 S. E. 196 (S. C.).—*Held,* that a railroad company cannot charge passengers boarding trains without tickets an excess fare over the maximum rate fixed by statute, although a rebate for said excess is given. Jones, Woods, Townsend, and Gage, JJ., *dissenting.*

The ruling of the main opinion is based on the argument that the issuance of a rebate check allows the railroad company the use of the money until the check is cashed in. This brings the rate above the maximum fixed by statute. The reports show but two cases directly in point. *Baltimore & Y. Turnpike Road v. Boone,* 45 Md. 344, supports the view of the majority. *Fetter, Carriers,* Vol. I, p. 7004, remarks that on principle the passenger ought not to be put to the trouble of having refunded an excess charge which the company had no right to make in the first place. *Reese v. Railroad Co.,* 131 Pa. St. 422, is in direct conflict with *Turnpike Road v. Boone, supra.* Such excess charge and rebate check is held to be not in contravention of the statute. The "reasonableness of the regulation" is the ground for this decision. The necessity of the system overbalances the fine line of overcharging as drawn in the Maryland case. Justice to the railroads and convenience to the public will require courts to follow the rule laid down in *Reese v. Ry. Co., supra.*

CONSTITUTIONAL LAW—POLICE POWER—USE OF TRADING STAMPS.—YOUNG V. COMMONWEALTH, 45 S. E. 327 (VA.).—*Held,* that a statute prohibiting the use of trading stamps is in contravention of the Constitution of the United States, 14 Amd., sec. 1, as an infringement on personal liberty.

State v. Dalton, 46 Atl. 234 (R. I.), on which the opinion relies, presents the first decision bearing directly on the rights of the State, by police power, to abolish the so-called "trading stamp evil." Police power is the only source of authority by which a State may enact legislation of this character. *Barbier v. Connolly,* 113 U. S. 27; *Lawton v. Steele,* 152 U. S. 133. The constitution of the United States so limits the exercise of this power that property rights shall not be arbitrarily or unreasonably infringed by State legislatures. *Rubstrat v. People,* 185 Ill. 133; *Perry v. Comm.,* 155 Mass. 117; *Goodcharles v. Wigeman,* 133 Pa. St. 431. The ruling is well taken. The above decision supported by *State v. Dalton, supra,* seems to have established the fact that the trading stamp system cannot be disturbed by State action.

CORPORATIONS CREATED BY CONGRESS—GRANT OF POWER TO SUE AND BE SUED—LIABILITY FOR TORTS.—OVERHOLSER V. NATIONAL HOME, 67 N. E. 487 (OHIO).—Through the negligence of the defendant a large quantity of oil and water was discharged upon the land of the plaintiff in such a manner as to destroy his crops. *Held,* that the "home" is a corporation for the purpose of performing an appropriate and constitutional function of Congress and although the power to sue and be sued is conferred, yet it cannot be sued for a tort.

The reasoning in this case rests on the principle that the "home" is an instrument of government. *Bigelow v. Inhabitants of Randolph,* 14 Gray 541. A suit against a corporation performing only governmental functions is a suit against the government and hence can only be maintained when

consent is given by the sovereign. *U. S. v. Gleeson,* 124, U. S. 225. In as much as the United States has not given jurisdiction for claims against it for torts its instrumentalities cannot be held liable therefor. *Barnes v. Dist. of Columbia,* 91 U. S. 540, 552; *Schillinger v. U. S.,* 155 U. S. 163. The government is not liable for the negligence or misfeasance of its officers. *Robertson v. Sibel,* 127 U. S. 507. Nevertheless Congress has power to pay claims or debts which rest upon mere equitable or honorary obligation. *U. S. v. Realty Co.,* 163 U. S. 427.

CORPORATIONS—EXAMINATION OF BOOKS—REFUSAL—PENALTY.—COX v. PAUL, 67 N. E. 580 (N. Y.).—The Stock Corporation Law imposes a penalty on each officer of the corporation who refuses to exhibit the stock book to a member, and also a like penalty upon the corporation. Plaintiff applied to the secretary for permission to inspect the book but was refused. The next day a like demand was refused. The day following a demand was made upon the president, which was refused but subsequently complied with. *Held,* that these interviews amounted to but one demand and one refusal on one occasion and not on several occasions. Parker, C. J., Martin and Werner, JJ., *dissenting.*

This seems to be a very strict construction of the statute. It was said that the statute being penal in its nature should not be extended, and that ordinarily one penalty would secure the end as effectually as many. But it would seem that had the president thought there would be but one liability the plaintiff would have been obliged to seek legal aid to inspect the books. The court next proceeds to rest its decision upon the arbitrary rule that a party suing for penalties can recover but for one violation prior to the commencement of the action and relies on *Jones v. Rochester Gas & El. Co.,* 168 N. Y. 65, as sanctioning that doctrine, but in that case the penalty was continuing and it was held that after an action was brought another request was necessary to start the running of the penalty anew. In the principle case it would seem that each refusal to permit the plaintiff to examine the books constituted a separate wrong as no injury need be shown. *Kelsey v. Pfandler Process Fermentation Co.,* 3 N. Y. Supp. 723.

CRIMINAL LAW—MARRIAGE OF WITNESS BEFORE TRIAL—TESTIMONY—PREJUDICIAL ERROR.—MOORE v. STATE, 75 S. W. 497 (TEX.).—Accused married an eye witness to the crime the day before the trial. The State merely proved by the wife the date of the marriage. *Held,* that such proceeding was prejudicial error, in that it aided the theory of the prosecution that defendant married the witness to suppress her testimony. Henderson, J., *dissenting.*

The bare right of the State to call a witness under the circumstances above was, at common law, a mooted question of evidence. In *Redley v. Wellesley,* 3 C. & P. 558, the wife was considered incompetent; also the husband in *Rex v. Sergeant,* 1 Ry. & M. 352. These cases formed an exception to the rule that a witness cannot, by his own acts, deprive the other party of a right to the testimony. *Greenl., Ev.,* secs. 167, 418 (15th ed.), and cases cited. The principle, rendering a wife an incompetent witness against her husband in criminal actions, except in an offense, one against the other, does not rest on the discretion of the parties. *Stein v. Bowman,* 13 Pet. 209. This rule of exclusion is binding upon the court. 3 *Jones, Ev.,*